

**STATE PROTOCOL AGREEMENT BETWEEN
THE COLORADO STATE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT
[BLM] AND THE COLORADO STATE HISTORIC PRESERVATION OFFICER [SHPO]
REGARDING THE MANNER IN WHICH THE BUREAU OF LAND MANAGEMENT
WILL MEET ITS RESPONSIBILITIES UNDER THE NATIONAL HISTORIC
PRESERVATION ACT [NHPA] AND THE NATIONAL PROGRAMMATIC
AGREEMENT [NPA] AMONG THE BLM, THE ADVISORY COUNCIL ON HISTORIC
PRESERVATION [COUNCIL], AND THE NATIONAL CONFERENCE OF STATE
HISTORIC PRESERVATION OFFICERS [NCSHPO]**

I. INTRODUCTION

A. This Protocol Agreement [Protocol] supplements the NPA, and describes how the Colorado SHPO and the BLM will interact. The goal of this Protocol is to improve the management of cultural resources on BLM lands in Colorado and those that might be affected by BLM's actions.

B. "Undertakings" are actions assisted, licensed, permitted, approved, funded, or authorized by BLM, as defined in the Code of Federal Regulations [36 CFR 800.2(o)]. Undertakings for which BLM is considered the lead agent, whether or not they involve federal lands, are federal actions and subject to this Protocol.

II. RELATIONSHIP OF THIS PROTOCOL WITH OTHER AGREEMENTS, LAWS AND REGULATIONS

A. This Protocol substitutes for Sections 106, 110, 111(a) and 112 (a) of the NHPA. It also replaces the 1987 Colorado "Programmatic Agreement Among U.S. Department of the Interior, Bureau of Land Management, Colorado, and Advisory Council on Historic Preservation" [CPA], which is terminated.

B. SHPO and BLM agree that:

(1) BLM conducts programs and carries out specific undertakings that involve land disturbance and modification of the built and natural environments, and;

(2) BLM is legally responsible for carrying out undertakings consistent with the NHPA and the National Environmental Policy Act [NEPA], and that;

(3) If any BLM office in Colorado fails to follow the process set forth in this Protocol, it will follow the procedures detailed in 36 CFR 800 regarding individual undertakings. Those procedures will remain in effect until a resolution is reached. Dispute resolution procedures are detailed in Section XII (A) below.

(4) The following procedures will be implemented by the BLM to fulfill its responsibilities mandated by the above-mentioned laws and regulations.

III. ADMINISTRATIVE INTERACTION AND REPORT PROCEDURES

A. Reports . All reports will be distributed to the BLM and SHPO.

(1) BLM will send cultural resource project logs (Attachment A) and NEPA logs to the SHPO at the time BLM prepares its annual report to Congress, usually in November or December.

(2) By June 30th of each year, BLM will prepare an annual summary report (Attachment B) that describes the implemented actions taken in the previous fiscal year and actions that are anticipated in the coming fiscal year. This report will include information detailed in Attachment B.

(3) By July 30th of each year, the SHPO will prepare a report that assesses the effectiveness of BLM's implementation of this Protocol and makes recommendations for actions to be taken by BLM. The BLM will consider SHPO's assessments and recommendations for future actions and will apply them to the plan for the following fiscal year, as appropriate. If SHPO is not satisfied with BLM's response, dispute resolution procedures [Section XII (A), below] may be followed.

B. Meetings .

(1) The SHPO, a BLM line manager (or the BLM Colorado State Director, if possible), BLM's Deputy Preservation Officer [DPO] for Colorado, and representatives of the BLM Colorado Cultural Resources Matrix Team will meet annually, no later than September 30, or more often as needed, to discuss pertinent issues. The Council will be invited to participate. At the August meeting, the SHPO and BLM will exchange information relevant to the goals and objectives set forth in this Protocol.

(2) Other meetings to address emerging issues and their effects on cultural resources may be arranged as necessary.

(3) Within six months after signing, BLM and SHPO will meet to review the implementation of this Protocol.

IV. SHPO INVOLVEMENT IN BLM PLANNING PROCESSES

BLM shall provide the SHPO the opportunity to participate at the development stage and all subsequent phases of land use planning in accordance with 43 CFR 1610.3 (Coordination with Other Federal Agencies, State and Local Governments, and Indian Tribes). BLM will provide the SHPO with all land management plans (e.g., Resource Management Plans, Cultural Resource Management Plans), special use plans (e.g., Fire Management Plans) and appropriate NEPA documents. Such plans will document methods to gain public input.

V. COOPERATIVE PROGRAM DEVELOPMENT AND ACTIVITIES

A. Shared Database and Information Management .

(1) SHPO and BLM will improve the exchange of information regarding the location and evaluation of cultural resources. Each agency will assure that such locational information is protected from unauthorized use.

(2) Cultural resources information exchange between BLM and SHPO will be through an automated database, managed by the SHPO. BLM will assist the SHPO in developing the system by providing financial, personnel, hardware and software resources, as funding becomes available.

(3) The SHPO will incorporate the results of BLM cultural resources inventories into the database as the results are produced, and will make the data available in order to update the statewide historic contexts.

(4) A review and analysis of the database status will be performed by BLM and SHPO annually, in time for the August meeting.

(5) The SHPO will provide the BLM with automated cultural resources information and with reasonable amounts of hard copy information not yet available in the database. Charges may be assessed by the SHPO and are subject to negotiation at the annual August meeting.

B. State-Level Historic Preservation Training .

The SHPO will be offered the opportunity to assist the BLM in on-going training of field managers and supervisors, as well as of cultural heritage specialists, for certification purposes. Training resources might include, but are not limited to: the BLM Colorado "Handbook For Cultural Resource Inventory, Evaluation and Mitigation" [Handbook], planning documents, and Colorado historic context documents. Review of training needs will occur on a yearly basis and will be conducted by the SHPO and BLM, in time for discussion at the annual meeting.

C. Public Outreach and Participation .

(1) BLM will develop and implement plans in support of public education and community outreach, along with cooperative stewardship and site protection, in consultation with SHPO. BLM will strive to develop at least one of these plans each year.

(2) BLM will seek and consider the views of the public when carrying out the actions under the terms of this Protocol. BLM may coordinate this public participation requirement with those of the NEPA and the Federal Land Policy and Management Act of 1976 [FLPMA], along with other pertinent statutes. Interested parties shall be invited to consult in the review process [Section VIII (C) below] if they have interests in the effect of a BLM undertaking on cultural resources.

(3) Interested parties may include local governments, especially those with historic preservation ordinances or resolutions (Attachment C); grantees, permittees, or owners of affected lands or land surfaces; Indian Tribes; and other interested parties, as determined by the BLM and SHPO.

VI. NATIVE AMERICAN PARTICIPATION

BLM will comply with relevant sections of the NHPA, American Indian Religious Freedom Act [AIRFA], and the Native American Graves Protection Act [NAGPRA] if a property or project is subject to those laws. BLM will seek and consider the views of an Indian tribe that is able to demonstrate a cultural affiliation with Colorado cultural resources within project's area of potential effects (APE).

VII. IDENTIFICATION AND EVALUATION OF CULTURAL RESOURCES

A. Identification .

BLM will identify all historic properties and sacred sites on all lands within Colorado that are within the APE of a BLM undertaking. BLM will ensure that the identification of cultural resources is conducted in accordance with professional standards detailed in the Secretary of the Interior's Standards and Guidelines [Secretary's Standards] and the Handbook.

B. Determinations of Eligibility and of Effect (Evaluation) .

(1) For routine undertakings, BLM will make determinations of eligibility according to criteria listed in 36 CFR Part 60.4 and determinations of effect according to 36 CFR 800.9 without consulting SHPO, except in certain instances [Section VIII (C)(2)(a), below]. When necessary, BLM will confer with SHPO if questions about eligibility and/or effect arise.

(2) During all inventories, BLM will ensure that cultural resources are evaluated in a manner consistent with the criteria cited above in Section VII (B)(1), as well as the Secretary's Standards, the Colorado historic context documents, BLM's 8100 manuals, appropriate National Register bulletins, and the Handbook.

(3) As appropriate, BLM will invite interested parties to consult.

VIII. REPORTING AND SHPO REVIEW PARAMETERS

A. Timing of Undertaking Implementation .

(1) BLM shall complete the inventory, evaluation and assessment of effects of cultural resources, along with the placement of written documentation of these findings in BLM's files, before proceeding with undertaking implementation.

(2) Most of BLM's undertakings [except those listed below in Section VIII (C)(2)(a)] are routine in nature, and will normally be permitted to proceed without SHPO review of **formal** documentation. Formal documentation is defined as final versions of reports and Colorado Office of Archaeology and Historic Preservation [OAHP] site and isolated find forms [site forms]. BLM will confer with SHPO in cases where there is any uncertainty.

B. Reporting .

(1) Quality Assurance .

(a) BLM will provide documentation in the form of complete and accurate site forms, Limited Results Survey Reports, or full-length inventory reports, as appropriate, to the SHPO, for all undertakings. BLM will ensure that Colorado State Report Guidelines [State Guidelines] and the Secretary's Standards are met in all documentation produced in-house.

(b) BLM will review the work of permitted contractors and will ensure that State Guidelines and the Secretary's Standards are met in all documentation prepared by contractors.

(c) Only qualified cultural heritage specialists will make determinations of eligibility and effect, and those individuals making determinations shall be identified in reports sent to SHPO.

(2) Timing of Documentation Submission .

(a) Formal documentation [as defined above in Section VII A (2)] should be submitted to the SHPO's office at the time BLM gives an undertaking notice to proceed, but not later than **three months** following completion of the fieldwork. Prompt transmission of this documentation will assure an updated database and will prevent future development of backlogs. If a final report will not arrive at the SHPO's office within the three month deadline, the BLM will notify the SHPO in writing, and will include in the correspondence a plan for completion and the expected date of submission.

(b) Backlog documentation [backlog] is defined as outstanding site forms, inventory reports and treatment reports in BLM's files that predates the implementation of this Protocol. All backlog will be submitted to the SHPO within twelve months of the Protocol signature date. If the documentation will not arrive at the SHPO's office before the deadline, BLM will notify SHPO in writing, and

will include in the correspondence a plan for completion and the expected date of submission. Mutually acceptable progress toward elimination of the backlog is a condition of continuing field office certification.

C. Review Processes .

(1) Routine Undertakings .

Except in the case of consultation thresholds listed below in Section VIII (C)(2)(a), an informational letter (Attachment D, informational) will accompany all final, formal BLM documentation that is sent to SHPO. If necessary, SHPO may comment, in writing, on BLM's findings. The BLM will respond, in writing, to any SHPO comments. Both parties will include such comments and responses in the annual report that assesses effectiveness of the Protocol.

(2) Exceptions .

(a) Consultation Thresholds . BLM will consult with SHPO on determinations of eligibility, [except when determinations have already been made, as under (1) (b) and (2) (b) below], of effect, and of treatment; and will consult with Council on determinations of effect and of treatment.

(1) SHPO and Council Review . BLM will conduct consultation with both SHPO and Council in the following situations:

- (a) non-routine interstate and/or interagency projects or programs
- (b) undertakings affecting National Historic Landmarks or National Register eligible or listed properties of national significance
- (c) undertakings that are determined by BLM, the SHPO or the Council to be highly controversial (e.g., undertakings which have the potential to affect significant cultural resources and that receive unusual public attention and/or involve conflict)

(2) SHPO Review . BLM will conduct consultation with SHPO only, in the following situations:

- (a) land exchanges, land sales, Recreation and Public Purpose leases, and transfers
- (b) undertakings affecting National Register eligible or listed properties
- (c) when BLM professional staff lack the appropriate regional experience or professional expertise, and until performance is mutually acceptable to the BLM DPO and SHPO
- (d) when BLM's cultural heritage specialists wish to bring a particular project to the attention of SHPO

(b) Consultation Processes.

(1) SHPO Consultation Only .

(a) BLM will submit formal documentation, as defined in Section VIII (A)(2) above, to SHPO, along with a letter requesting concurrence with its determinations of eligibility and of effect (Attachment D, concurrence).

(b) SHPO will have ten (10) working days to respond to BLM. If SHPO agrees with BLM, BLM will allow the undertaking to proceed.

(c) If SHPO disagrees with BLM, procedures for resolving disagreements of eligibility and effect, detailed below in Section VIII (C)(4), will be followed.

(2) SHPO and Council Consultation.

(a) BLM will submit formal documentation, as defined in Section VIII (A)(2) above, to SHPO, along with a letter requesting concurrence with its determinations of eligibility and of effect (Attachment D, concurrence).

(b) SHPO will have ten (10) working days to respond to BLM.

(c) Once BLM receives SHPO's decision, it will forward all formal documentation, along with a copy of the concurrence letter signed by both BLM and SHPO and a cover letter asking for Council review to Council.

(d) Council will have 30 working days to respond to BLM and SHPO.

(3) Treatment .

(a) If a property, group of properties, or class of properties that have been determined eligible for inclusion in the National Register of Historic Places [NRHP] will be affected by an undertaking, BLM will determine, in consultation with SHPO, whether a Memorandum of Agreement [MOA] or a Treatment Plan is appropriate, and will document this determination in the concurrence letter (Attachment D, concurrence).

(b) Treatment Plans or MOAs will take into account national policies set forth in Section 2 of NHPA, the Secretary's Standards, the Council's "Treatment of Archaeological Properties: A Handbook", and "Preparing Agreement Documents".

(c) BLM and SHPO will jointly prepare MOAs. Following submission of a first draft by BLM to SHPO, SHPO will have ten (10) working days to comment. After BLM receives SHPO's comments, it will have ten (10) working days to respond. The ten-working-day comment periods will continue in this fashion until final agreement is reached.

(d) Following the preparation of a treatment plan, BLM will submit it to SHPO. SHPO will have ten (10) working days in which to comment.

(4) Resolving Disagreements about Project Eligibility, Effect and Treatment .

(a) If, after its first ten-working-day review, SHPO disagrees with BLM on determinations of eligibility, effect or treatment, the two parties will attempt to resolve the issue(s) over the following ten (10) working days (see flow chart in Attachment E).

(b) If the Field Office manager and SHPO are unable to resolve their disagreement after the second ten-day period, they will negotiate a course of action and a timeframe for resolution.

(c) If BLM and SHPO cannot agree on a course of action and a timeframe, BLM will request the Colorado DPO, acting on behalf of the Preservation Board [Board], to attempt to resolve the issue with SHPO during a ten-working day period.

(d) If the Colorado DPO and SHPO still cannot agree, the parties will suspend operation of the national PA and protocol and will consult under provisions of 36 CFR 800.

IX. BLM REVIEWS AND SHPO MONITORING

A. BLM Review .

BLM's Deputy Preservation Officer will conduct reviews of each field office (Attachment F), at least annually, in sufficient detail, to determine:

- (1) whether qualified cultural heritage specialists are available;
- (2) whether undertakings are receiving cultural resource consideration;
- (3) whether project documentation is completed and is being sent to SHPO in a timely manner (three months unless there is an agreement with SHPO in place);
- (4) whether cultural heritage specialists are making accurate professional judgements;
- (5) whether cultural resource identification, evaluation and treatment has occurred before undertakings proceed;
- (6) whether final reports of treatment are being completed and sent to the SHPO;
- (7) whether follow-up monitoring, where required by avoidance stipulations, MOA or treatment plan specifications, is being completed.

B. SHPO Monitoring.

The SHPO may monitor BLM's activities pursuant to this Protocol through field visits and inspection of records. The BLM will cooperate with the SHPO's monitoring activities.

X. DISCOVERIES

(A) In the event that potentially eligible cultural resources are discovered during the course of ground disturbance and cannot be avoided, work in the immediate vicinity of the discovery will cease.

(B) BLM will ensure that the cultural resources are protected from further disturbance until decisions about treatment are made and treatment is completed.

(C) Within 48 hours of the discovery, BLM will evaluate the site and, in consultation with the SHPO, select the appropriate mitigation option. The BLM will implement the mitigation in a timely manner.

(D) The process will be fully documented (in reports, site forms and photographs), and the documentation will be forwarded to the SHPO. Large-scale projects will include a discovery process in the treatment plan.

XI. STAFFING

A. Professional Qualifications .

(1) BLM will strive to meet the Secretary's Standards for Historic Preservation Professionals consistent with Office of Personnel Management guidance and section 112 of the National Historic Preservation Act, while giving full value to on-the-job experience.

(2) If a BLM office does not have a full-time, permanent cultural heritage specialist on staff, it must have access to a cultural heritage specialist who has been certified to operate under this protocol and an approved plan that outlines how the work will be accomplished. The plan will be approved and closely monitored by the Colorado DPO. If there is no full-time, permanent cultural heritage specialist on staff and no plan, the office will be at risk of being de-certified and therefore will operate under 36 CFR 800 procedures and timeframes.

B. Certification .

(1) BLM-Colorado will ensure that expertise in prehistoric archaeology, historic archaeology, industrial archaeology, history, architectural history, historic architecture, Native American coordination, public outreach/heritage education and Traditional Cultural Properties (identification, evaluation and treatment) is available to all BLM-Colorado cultural heritage specialists.

(2) If BLM determines that it does not employ a cultural heritage specialist with a particular skill, it will obtain that expertise for the purpose of determining National Register eligibility, effects, and treatment for the cultural resources in question. The BLM may request the assistance of SHPO staff in such cases or may obtain the necessary expertise through contracts, BLM cultural heritage specialists from other offices, or cooperative arrangements with other agencies. If a particular BLM office seeks help from another BLM office, from the SHPO, from the Anasazi Heritage Center, or from other experts, this does not imply that certification is at risk.

(3) When personnel changes occur, e.g., cultural heritage specialists or managers leave, and until positions are filled and training [as discussed below in (4)] is completed, the BLM field manager will ensure and document that qualified cultural heritage specialists are available to conduct the tasks outlined in this Protocol. If decertification is a possibility, the procedures in Section 8 of the NPA will be followed.

(4) Certification training for new field managers and cultural heritage specialists will include, at a minimum, the NPA, the Protocol, and a review of the Handbook.

(5) The qualifications of cultural heritage specialists will be reviewed by the DPO and SHPO to determine whether any on-the-job training, mentoring, or additional experience is necessary before the cultural heritage specialist is qualified to make determinations of eligibility and effect. The recommendations will be presented to the Colorado BLM State Management Team for review and approval.

(6) The BLM Board, in consultation with SHPO, will certify that each field office has a full-time, permanent cultural heritage specialist on staff:

(a) capable of carrying out the historic preservation responsibilities described in this Protocol; and

(b) trained as specified under Stipulation V B.

If the Board determines that a field office lacks such a staff person, it will document to SHPO that office's access to a qualified cultural heritage specialist who has been certified by the Board, pursuant to Stipulation XI A (2). The Board will also certify, in consultation with SHPO, that BLM has available to all of its Colorado cultural heritage staff the various kinds of expertise specified in Stipulation XI B (1). BLM shall make use of partnership opportunities with other

agencies to provide expertise in such fields. In addition, BLM shall make available to its Colorado cultural heritage staff opportunities for continued professional development through classes, mentoring, and participation in state and national organizations such as the Colorado Council of Professional Archaeologists, the Society for American Archaeology, and the Register of Professional Archaeologists.

(7) SHPO will evaluate the field offices' determinations of eligibility and effect under this Protocol as described in Attachment G.

C. Para-Archaeologists .

(1) Para-archaeologists will work only under the supervision of a qualified cultural heritage specialist. The use of para-archaeologists will be at the discretion of the cultural heritage specialist.

(2) Para-archaeologists will not substitute for cultural heritage specialists when the specialists are absent, nor will para-archaeologists be considered adequate replacements for seasonal or term employees.

(3) Para-archaeologists will not conduct cultural resources inventories for undertakings with which they have direct involvement (e.g., which they have sponsored, for which they are a team leader). Exceptions are at the discretion of the cultural heritage specialist.

(4) Inventories conducted by para-archaeologists will

(a) Not exceed ten acres in a block inventory or two linear miles in a corridor survey.

(b) Not include recording of sites. Whether individual para-archaeologists will record isolated finds is at the discretion of the cultural heritage specialist.

(5) Individuals wishing to serve as para-archaeologists will apply for and be accepted as para-archaeologists at the discretion of the cultural heritage specialist.

(6) All prospective para-archaeologists are required to undergo 40 hours of classroom and field training along with 40 hours of supervised field experience.

(7) Para-archaeologists will be reviewed annually by the cultural heritage specialist to determine whether a refresher course is needed.

(8) A statement of ethics will be reviewed and signed annually by the para-archaeologist. BLM will not tolerate abuse of the para-archaeology program. Para-archaeologists that violate these guidelines or exhibit unethical behavior will be immediately de-certified and will not be reinstated.

XII. PROTOCOL DISPUTE RESOLUTION PROCEDURES, AMENDMENTS, AND TERMINATION

A. Protocol Dispute Resolution Procedures .

- (1) Should the BLM or the SHPO object, in writing, within thirty (30) working days, to an action taken by the other party to this Protocol, they will consult to resolve the objection.
- (2) If the dispute cannot be resolved, BLM and SHPO will mutually determine a course of action. Options might include consultation with the National Board, the Council or alternative dispute resolution procedures.
- (3) If alternative arrangements are not mutually agreeable, the dispute will be referred to Council. BLM and SHPO will abide by the decision of Council.
- (4) If a member of the public wishes to object to a BLM action, they will follow standard Interior Board of Land Appeals [IBLA] procedures.

B. Protocol Amendments .

The BLM or the SHPO may request amendment of this Protocol at any time, whereupon the parties will consult to consider such amendment. Amendments will become effective upon signature of both parties and will be attached to this protocol.

C. Protocol Termination .

- (1) BLM or SHPO may terminate this Protocol by providing ninety (90) days written notice to the other party, as long as the parties consult during this period to seek agreement on amendments or other actions that would avoid termination. Either may request the assistance of the State Director, the Board, and/or Council.
- (2) In the event of termination, the BLM will operate under the provisions of 36 CFR Part 800.

XIII. OTHER STATE-SPECIFIC PROCEDURES

BLM will follow procedures and adhere to policies detailed in the Handbook and other supplemental manual guidance, along with SHPO Cultural Resource Report Guidelines. BLM and SHPO will jointly develop and revise handbooks and other guidance as necessary

XIV. ATTACHMENTS

Attachments may be added to this Protocol with the mutual approval of the SHPO and the BLM. Referenced attachments are:

- A. Example Cultural Resource Project Log Page

- B. Outline of Topics Covered in Colorado BLM/SHPO Annual Report
- C. Entities with Historic Preservation Ordinances and Certified Local Governments, Etc.
- D. Letters
- E. Flow Chart Illustrating Process for Resolving Disagreements about Eligibility, Effect and Treatment
- F. BLM Review Form
- G. SHPO Evaluation of BLM Determinations

BUREAU OF LAND MANAGEMENT

By Ann Morgan, Colorado State Director

Date

/s/ 4/29/98

COLORADO STATE HISTORIC PRESERVATION OFFICER

By James Hartmann, Colorado State Historic Preservation Officer

Date

/s/ 4/28/98